United States Department of Labor
Employees' Compensation Appeals Board

D.B., Appellant	)	
and	)	**Docket No. 13-369**
	)	**Issued: May 7, 2013**
DEPARTMENT OF THE NAVY, NAVY MEDICAL COMMAND, Great Lakes, IL, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
RICHARD J. DASCHBACH, Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On December 6, 2012 appellant, through her attorney, filed a timely appeal of the October 15, 2012 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issues is whether appellant has met her burden of proof to establish a traumatic injury in the performance of duty.

[1] 5 U.S.C. §§ 8101-8193.

FACTUAL HISTORY

On February 25, 2010 appellant, then a 39-year-old nursing assistant, filed a traumatic injury claim alleging that on February 4, 2010, she fell on ice and injured her hands, knee, ankle and leg. She did not stop work.

On April 2, 2010 OWCP advised appellant of the type of factual and medical evidence needed to establish her claim. It particularly requested that she submit a physician's reasoned opinion addressing the relationship of her claimed condition and specific work factors.

Appellant was treated by Dr. Gregory Kaftan, Board-certified in preventative medicine, on February 4, 2010 for right ankle pain. She reported falling on ice and twisting her right ankle. Dr. Kaftan noted findings of generalized swelling with tenderness over the medial malleolus and anterior ankle. He performed an x-ray of the right foot which revealed arthritic changes of the right first metatarsophalangeal joint and a small calcaneal spur. Dr. Kaftan diagnosed right ankle sprain and returned appellant to sedentary work. On February 16, 2010 he noted a tender medial ankle and anterior lower tibia, edema in the mid lower leg region with antalgic gait. Dr. Kaftan diagnosed right ankle sprain, healing slowly. On February 19, 2010 he noted a right ankle x-ray revealed ossifying bodies in anteromedial ankle joint and possible osteochondromatosis. Dr. Kaftan diagnosed a stable right ankle sprain. In dispensary permits dated February 4 to 16, 2010, he noted that appellant reported falling on ice. Dr. Kaftan continued restricted sedentary duty until February 16 and March 21, 2010.

Appellant was also treated by Michelle Axium, a nurse practitioner, in February and March 2010. She submitted absentee verification forms dated March 2, 2010, signed by an unidentified health care provider, noting that appellant had diagnostic testing. Appellant was treated in the emergency room on March 5, 2010 by a provider whose signature is illegible, for right ankle pain occurring after she fell on ice one month prior. The physician noted swelling and redness on the medial side of the ankle. X-rays of the right ankle and foot did not reveal a fracture and appellant was diagnosed with an ankle sprain. On March 16, 2010 appellant was treated by Dr. Robert Mahmarian, a podiatrist, who diagnosed talar neck lesion of the right ankle and ordered blood work.

In a decision dated May 14, 2010, OWCP denied appellant's claim on the grounds that the evidence submitted was insufficient to establish that the claimed medical condition was causally related to the established work-related events.

On May 13, 2011 appellant requested reconsideration. On July 5, 2010 she was treated by Dr. Colin V. Crickard, a Board-certified orthopedic surgeon, for right ankle pain after an injury. Dr. Crickard noted findings upon examination of no edema or tenderness and a normal sensory and motor examination. He diagnosed localized primary osteoarthritis of the right tibiotalar joint and released appellant to work with restrictions.

Appellant was treated by Dr. George B. Holmes, Jr., a Board-certified orthopedic surgeon, from April 6 to July 25, 2011, for right ankle pain. She reported falling on ice when leaving work on February 3, 2010. Dr. Holmes noted findings of pain with deep palpation over the medial aspect of appellant's ankle and pain over the medial malleolus. He reviewed the

magnetic resonance imaging scan which was consistent with avascular necrosis of the hindfoot including the talus with changes in the talar neck consistent with her previous injuries. Dr. Holmes opined that he was unsure if all of appellant's symptoms were from avascular necrosis and did not recommend surgery. In a report dated May 11, 2011, he noted an electromyogram and recommended a foot brace. In a July 25, 2011 report, Dr. Holmes treated appellant for right foot pain and right ankle swelling after a reported trip and fall incident the past week. He noted physical findings of full range of motion of the right ankle, subtalar and midfoot joints and tenderness over the distal anterior tibia and anteromedial aspect of the ankle. Dr. Holmes noted x-rays of the right ankle revealed intact mortise, no acute fractures, dislocation or soft tissue injuries, with an anterior spur on the distal tibia and cystic changes on the talar neck. He diagnosed avascular necrosis of the talus, lesion of the anterior tibia and anterior tibial spur. Dr. Holmes recommended a foot brace, external bone stimulator and surgical intervention.

On May 3, 2011 appellant was treated by Dr. Sanjeev Joshi, a Board-certified orthopedic surgeon, for right foot pain. She reported slipping and falling a year prior. Dr. Joshi noted x-rays revealed avascular necrosis of the talus. He noted findings of heel tenderness and recommended appellant lose weight. In a November 3, 2011 report, Dr. Joshi noted findings of obesity and tenderness in her ankle. He opined that conservative treatment failed and recommended exploratory surgery.

On October 15, 2012 OWCP denied modification of the prior decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation of FECA, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.[2]

To determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.[3] The second component of fact of injury is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability, claimed and the employment event or incident, the employee

[2] *Gary J. Watling*, 52 ECAB 357 (2001).

[3] *Michael E. Smith*, 50 ECAB 313 (1999).

must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.[4]

Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.[5] The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested and the medical rationale expressed in support of the physician's opinion.[6]

ANALYSIS

In the instant case, it is not disputed that appellant worked as a nursing assistant and that on February 4, 2010 she fell on ice at work. Appellant was diagnosed with avascular necrosis of the talus and osteoarthritis of the right tibiotalar joint. However, she has not submitted sufficient medical evidence to establish that her avascular necrosis, osteoarthritis or other conditions are causally related to the February 4, 2010 work incident. On April 2, 2010 OWCP advised appellant of the type of medical evidence needed to establish her claim. Appellant did not submit a rationalized medical report from a physician sufficiently explaining how the February 4, 2010 incident caused or aggravated a diagnosed medical condition.

Appellant submitted reports from Dr. Holmes, from April 6 to July 25, 2011, who diagnosed avascular necrosis of the hindfoot including the talus. She reported falling on ice when leaving work on February 3, 2010. Dr. Holmes opined that he was unsure if all appellant's symptoms were from avascular necrosis. Similarly, in a July 25, 2011 report, he diagnosed avascular necrosis of the talus, lesion of the anterior tibia and anterior tibial spur. Appellant reported having a trip and fall incident the past week. The Board finds that, although Dr. Holmes noted appellant's fall on ice at work, he did not provide medical rationale explaining how this fall caused or aggravated any diagnosed condition. Dr. Holmes did not explain the process by which slipping on ice would cause a diagnosed condition and why such condition would not be due to any nonwork factors such as the most recent trip and fall accident or appellant's diagnosed obesity. Therefore, this report is insufficient to meet appellant's burden of proof.

Appellant submitted reports from Dr. Kaftan dated February 4 to 19, 2010 who diagnosed right ankle sprain. She reported falling on ice and twisting her right ankle. Dr. Kaftan noted x-rays of the right ankle and right foot revealed a small calcaneal spur and an accessory ossicle on the distal to medial malleolus and arthritic changes in the right first metatarsophalangeal joint.

[4] *Id*.

[5] *Leslie C. Moore*, 52 ECAB 132 (2000).

[6] *Franklin D. Haislah*, 52 ECAB 457 (2001); *Jimmie H. Duckett*, 52 ECAB 332 (2001) (medical reports not containing rationale on causal relationship are entitled to little probative value).

Similarly, in dispensary permits dated February 4 to 16, 2010, he noted that appellant reported falling on ice. However, Dr. Kaftan appears merely to be repeating the history of injury as reported by her without providing his own opinion regarding whether her condition was work related. To the extent that Dr. Kaftan is providing his own opinion, he failed to provide a rationalized opinion regarding the causal relationship between any of the diagnosed conditions and the fall on ice.[7] Therefore, these reports are insufficient to meet appellant's burden of proof.

Appellant was also treated by Dr. Crickard on July 5, 2010 who noted diagnoses and noted that she reported an injury in the past year. Likewise, she submitted reports from Dr. Joshi dated May 3 and November 3, 2011 who diagnosed avascular necrosis of her talus. Appellant reported slipping and falling a year prior. Dr. Mahmarian treated her on March 16, 2010 and noted a diagnosis but did not provide a history of injury or specifically address whether her fall at work aggravated a diagnosed medical condition. These reports are insufficient to establish the claim as these physicians did not specifically address whether the February 4, 2010 fall at work caused or aggravated a diagnosed medical condition.[8]

Appellant submitted records from Ms. Axium a practical nurse, from February 26 to March 5, 2010. However, this evidence is of no probative medical value as the Board has held that nurses are not competent to render a medical opinion under FECA.[9] Appellant was treated on March 5, 2010 by a provider whose signature is illegible, who diagnosed ankle sprain. Also submitted were absentee verification forms dated March 2, 2010, from an unidentified health care provider. However, the Board has held that medical reports lacking proper identification do not constitute probative medical evidence.[10]

Because appellant has not submitted a reasoned medical opinion explaining how her February 4, 2010 fall at work caused or aggravated a diagnosed medical condition, she has not met her burden of proof.

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant's condition became apparent during a period of employment nor the belief that her condition was caused, precipitated or aggravated by her employment is sufficient to establish causal relationship. Causal relationships must be established by rationalized medical opinion evidence.[11] Appellant failed to submit such evidence and OWCP therefore properly denied appellant's claim for compensation.

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[7] *See id*.

[8] *A.D.*, 58 ECAB 149 (2006) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

[9] *See David P. Sawchuk*, 57 ECAB 316 (2006) (lay individuals such as physician's assistants, nurses and physical therapists are not competent to render a medical opinion under FECA); 5 U.S.C. § 8101(2) (this subsection defines a "physician" as surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law).

[10] *See R.M.*, 59 ECAB 690 (2008); *D.D.*, 57 ECAB 734 (2006).

[11] *See Dennis M. Mascarenas*, 49 ECAB 215 (1997).

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish that her claimed conditions were causally related to her employment.

ORDER

IT IS HEREBY ORDERED THAT the October 15, 2012 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 7, 2013
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board